

ORIGINAL

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2010 MAR 24 PM 2:48

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DISTRICT CLERK MAK

UNITED STATES OF AMERICA

V.

JESSE WILLIAM MCGRAW

CASE NO. 3:09-CR-210-B

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MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR REVIEW OF, AND RELEASE FROM  
HIS PRETRIAL DETENTION ORDER

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MOTION FOR PERSONAL RECOGNIZANCE  
BOND RELEASE

MOTION FOR PERSONAL RECOGNIZANCE

BOND RELEASE

I.

To Honorable Judge of said court, Defendant requests a personal recognizance bond for release until further court proceedings.

Defendant will show to said court has a medical condition that afflicts the Defendants wife, BEATRIZ BRACHO MCGRAW with hypoglycemia, which is a serious illness. Attached to motion are various medical documents which include: One letter from Defendants wife's Diabetes specialist stating "Her diabetes is uncontrollable and she suffers from severe hypoglycemia." Two sheets regarding an emergency response from Arlington Fire Dept, EMS which states her at the time of the report to be "unconscious with no motor, verbal or eye coordination." Time of the incident was recorded on sheet as 0530 am.

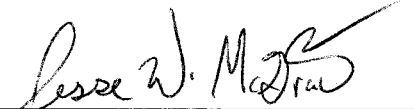
Defendant and his wife have a child 19 months of age, Defendants wife and child need Defendants assistance.

II.

Defendant pleads pursuant to (ESTELLE VS GAMBLE) 429 US 97, 50 L ED 2D 251, 97 S CT 285. A pro-se complaint, however inartfully pleaded, must be held less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the movant can prove no set of facts in support of his claim which would entitle him to relief. 50 L ED 2D at 255.

III.

The Defendant therefore prays to said Honorable Court for relief and reversal of the Magistrates detention order.

X   
RESPECTFULLY SUBMITTED

JESSE WILLIAM MCGRAW  
REG. 38690-177  
FCI, PO BOX 9000, Seagoville  
TX, 75159-9000

#### REASONABLE CONDITION OF RELEASE

A defendant should only be detained before trial upon a government showing by clear and convincing evidence that no possible release condition or set of conditions will reasonably assure the safety of the community, and by a preponderance of the evidence that no condition or set of conditions will reasonably assure the Defendant's appearance. *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985). It is an error to interpret the "reasonably assure" standard as a requirement that the release conditions "guarantee" the defendant's appearance or community safety "contradicts both the framework and the intent of the pretrial release and detention provision of the 1984 Act." *Id.*

Section 3142(g) provides that the Court must consider four factors in determining whether there are no conditions of release that will reasonably assure the appearance of the defendant and the safety of the community. The factors are, generally, (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant's history and personal characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

18 U.S.C. 3142(g) Proper consideration of the factors indicate that the Defendant should be allowed release with reasonable conditions.

In *United States v. Stark*, 02-CR-1006 (ARR) (E.D.N.Y. 2002), as part of the defendant's conditions of pre-trial release, the district court imposed restrictions that encompassed the defendant not being allowed to possess any type or form of computer at his residence, and should defendant obtain employment that required him to work with or around computers, then pre-trial services was to be notified for investigation and subsequent approval or denial of defendant's employment. Also, defendant was subjected to electronic monitoring as an added precaution against flight risk and GPS monitoring of movement.

#### FACTUAL BACKGROUND

The defendant JESSE WILLIAM MCGRAW is 25 years old and has no prior criminal convictions. He has longstanding ties to the community and has lived in Dallas County for 7 years. Prior to residing in Texas, He was raised in San Diego County California since the age of two. He majored in Music and Multimedia at Mira Costa College and Giacolettii School of Music. Defendant has never left the United States, and does not possess a passport. Defendant has no gaps in his employment history.

Defendant was accused during his probable cause, bond, and detention hearing of transmitting a malicious code to NASA computers and Dallas PD Aviation Unit computers. There was no evidence provided during these hearings that the Defendant had compromised any NASA or DPD Aviation computers. A statement was provided by both NASA and DPD stating that the alleged breach(es) had never occurred. An FBI Agent did also accuse the Defendant of possessing up to five various names registered to the Defendant under his social security number, however this statement was not factual nor justified by an affidavit from social security.

It is quite clear that the Defendant is not a flight risk nor a danger to the community based on clear and convincing evidence.

The defendant therefore prays to said Honorable for relief from incarceration and reversal of Magistrate's detention order.

#### NATURE OF THE OFFENSE

The defendant is charged in a two count indictment- transmitting a malicious code. (U.S.C.S. 1030) Based on discovery of evidence and the over all nature of the offense as it relates to the defendant; being that no individuals or parties were harmed or in danger; being that the nature of the offense was non violent, the nature of the offense should weigh in favor to the Defendant.

#### WEIGHT OF THE EVIDENCE

The government's evidence was presented by one special agent's summary testimony. Much of his testimony was conclusory, speculative, and based on hearsay. The Defendant recognizes that relaxed forms of testimony are generally allowed in detention hearings, however while the broad-brush nature and substance of Agent Lynd's testimony may have established the general parameters of an offense, it lacked the precision necessary to ascribe accurately the Defendant's role in it. And counsel for the Defendant was unable to pointedly cross-examine the witness for want of Jencks production ~~as described infra~~. It is clear that the magistrate judge gave great weight to the testimony and, the Defendant submits, improperly so.

#### DEFENDANT'S HISTORY AND PERSONAL CHARACTERISTICS

The Defendant's criminal record is relevant for consideration as to his history and characteristics. See 18 U.S.C. §3142(g)(3)(A). Mr. McGraw has no prior criminal history which should weigh favorably for release. The Court should also consider Mr. McGraw's personal characteristics and family ties. The pretrial services report and the proffered testimony show that he has resided in Dallas County, Texas, area for at least seven years and lives with his wife and daughter while supporting them financially. McGraw's wife Beatriz has offered to monitor the Defendant and assured the Court that Jesse McGraw will not be a flight risk or obstruct justice.

## ECONOMIC DANGER TO THE COMMUNITY

Evidence at hearing established that the government has essentially shut down any ongoing criminal activity through the execution of search and seizure warrants in June 2009. The government also has seized virtually all of the defendants' assets by seizure warrants.

computer &  
electronic  
equipment

Economic danger to the community is not the type of danger that Congress intended to take away someone's liberty. Courts narrowly recognize the possibility of economic harm and "rarely conclude that economic harm presented rises to the level of danger to the community for which someone should be detained" under Section 3142. See United States v. Madoff, 586 F. Supp. 2d 240, 254 (S.D.N.Y. 2009). Any "economic danger" to the community could easily be limited by reasonable conditions. See Byrd, 969 F.2d at 110.

The record does not support the finding that there are "no reasonable conditions" for the Defendant's release. A number of conditions have been found reasonable [even for serious violent criminals: electronic monitoring in the home; restricted communications to only attorneys and individuals approved by the court; video surveillance at the Defendant's residence at his own expense; use of only one telephone line that may be monitored; an agreement to forfeit large sums of money upon determination that a violation of a condition has resulted; being subject to unannounced searches by FBI agents, pretrial services, or by other law enforcement agencies. United States v. Patriarca, 94 F.2d 789 (1st Cir. 1991). The Defendant submits that one or a combination of conditions could "reasonably" limit the alleged risk of flight and minimal potential economic danger to the community.

## CONCLUSION

For all of the reasons herein above set forth, there are conditions that will reasonably assure the Defendant's appearance at all future hearings in this case, and that will also assure the safety of other persons and the community. Accordingly, we pray this court follows pretrial service's determination that the Defendant is not a flight risk and not a threat to society. The Defendant is also willing to abide by any other conditions the Court may deem appropriate. Wherefore, premises considered, we respectfully ask that the Defendant be released on his own recognizance or with reasonable conditions.

I, JESSE WILLIAM MCGRAW certify under penalty of perjury under 28 U.S.C. 1746 that these documents are true and correct on the 26th day of January 2010

X Jesse McGraw

RESPECTFULLY SUBMITTED

REG# 38690-177

JESSE WILLIAM MCGRAW

FCI, PO BOX 9000

SEAGOVILLE, TX, 75159-9000

Order granting/denying motion for personal recognizance bond for temporary release until further outcome of any court proceedings:  
on this 18<sup>th</sup> day of March 2010

\_\_\_\_\_  
Judge



DIABETES AND THYROID  
CENTER OF FORT WORTH

December 14, 2009

To Whom It May Concern:

Beatriz Bracho (08/27/1984) is a patient I am treating for Type 1 Diabetes Mellitus. Her diabetes is uncontrolled and she suffers from severe hypoglycemia.

Dr. Chris Bajaj  
Board Certified Endocrinologist.





Limbs: blue  
Blue or pale

absent 0 no response

0 flaccid

0 absent

Case 3:09-cr-00210-B Document 33 Filed 03/24/10

Patient Status 13

Page 130

Time

1 minute APGAR score: \_\_\_\_\_

5 minute APGAR score: \_\_\_\_\_

☐ improved

☐ worsened

☐ no change

☐ Arlington M

☐ helicopter

☐ ground other

### Intubation

### Missed ETT Reasons

### Destination Determined By

### Advanced Directive

ID#	Successful	Tube Size
	Yes No	
	Yes No	
	Yes No	

- ☐ esophageal intubation
- ☐ cords not seen
- ☐ abnormal anatomy
- ☐ emesis/blood
- ☐ other \_\_\_\_\_

- ☐ 1st responder
- ☐ ambulance provider
- ☐ patient
- ☐ other \_\_\_\_\_

- ☐ DNR order
- ☐ decapitation
- ☐ decomposition
- ☐ dependent lividity
- ☐ massive head/ chest trauma
- ☐ rigor mortis

Time Completed: \_\_\_\_\_

### Combitube

ID#	Successful	Time
	Yes No	

### Methods Verified

- ☐ breath sounds present
- ☐ capnometer reading
- ☐ esophageal detector device
- ☐ tub misting
- ☐ chest rise
- ☐ epigastric sounds absent
- ☐ skin color change
- ☐ vocal cords visual

### Drug Administration

Drug	ID #	Dose	Route	Time	Drug	ID #	Dose	Route	Time
glucose	M11	25 g	IV	0630					
O2		21pm	NC						

C

H

A

R

T

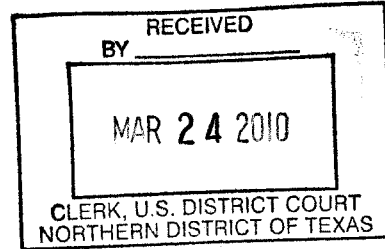
E

Signature & ID# \_\_\_\_\_

### Inventory List

- ☐ Intubation
- ☐ Oral Glucose
- ☐ IV Access
- ☐ Defibrillation
- ☐ BVM
- ☐ Aspirin
- ☐ Albuterol (w/nebulizer)
- ☐ Nitroglycerin
- ☐ Glucose Check
- ☐ D50
- ☐ Oxygen (l)

3-18-10



Dear: John Nicholson,

I would like to request an evidentiary hearing as soon as possible, especially before i go to trial.

Also, I am requesting a copy of my transcripts especially from my detention and bond hearing. With two more months to go before trial, i desperately need the documents so i can study them for my own benefit.

Also, before trial, we need to sit down and have a closer look at mcgrew, since i am sure he will give his testimony at trial. I have loads and loads of print outs from his website, talking serious defamation; looking at his character, and his exscessive bragging; and how he's held security conferences solely about me, and how he used his expertise and called the FBI.

This man, however being a public white hat security guru, i believe is a closet hacker. Since his website bares many links related to hacking, Defcon Meetings (hacker conferences) and what not. Staying up until after 11pm chatting with his own wife on the internet (on his website) talking trash to members of his website. His professionalism is absolutely questionable, motives are obvious; and his testimony should not stand a chance to his online charactar. Even Dan James can see right through MCGREW's vasaad. Print yourself out statements of his, because they are very useful.

We should plan on smashing the witnesses testimony. Even the Dallas FBI agents Lynn and Singh; who both have sworn their testimonies to be true and to the best of their knowledge, lied on the stand about matters that have kept me in prison without bail; comitting perjury. If the before statements turned out not to be true, then why should their testimony at trial be any more accurate than the testimony given at my various hearings? It wont.

I have proven time and time again about their integredy being weak and so is their testimony. I need to see you, see somebody because i need to help you understand all it is that i found in my discovery evidence.

Sincerely,

  
Jesse McGraw

3-18-10

Clerk of the Court,

I have enclosed four motions that I wish to file. I have no access to a copier and have asked repeated staff members to either be told "no" or to ask someone else. I have two other parties involved who need service. I am not sure if they automatically get service or what do I do to get them served. Please help.

The Two parties are:

Candina Heath

1100 Commerce St. 3rd Floor

Dallas, Tx 75242

Candina.heath@usdoj.gov

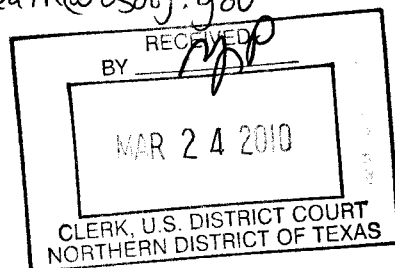
John Nicholson

Office: FPD

525 Griffin St. ste 629

Dallas, Tx 75202

John\_nicholson@fd.org



Thank you,

Jesse William McGraw 38690-177  
FCI, P.O. Box 9000, Seagoville, Tx, 75159

Defendant in Custody; Pro Se.

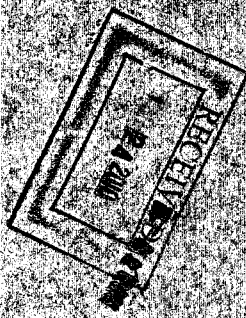


Jesse McCard  
38690-177  
FBI, P.O. Box 9000  
Seagoville, TX 75159

C

1100 Commerce Street

Clerk of the Court  
Northern District, Dallas Division  
Room 1452 Dallas TX 75242



X-MAY

